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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,778	02/16/2001	Fernando Stroppiana	4758US	3382

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EXAMINER

BAHTA, ABRAHAM

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 07/08/2002

2

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/785,778

Applicant(s)

STROPPIANA, FERNANDO

Examiner

Abraham Bahta

Art Unit

1775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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Specification

The following guidelines illustrate the preferred layout and content for patent applications.

These guidelines are suggested for the applicant's use.

Arrangement of the Specification

The following order or arrangement is preferred in framing the specification and, except for the reference to the drawings, each of the lettered items should appear in upper case, without underling or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-Reference to Related Applications.
- © Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on compact disc (see 37 CFR 1.52(e)(5)).
- (e) Background of the Invention.
 - 1. Field of the Invention.
 - 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.

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- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (I) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing, if on paper (see 37 CFR 1.821-1.825).

Abstract

The abstract which is a brief narrative of the disclosure as a whole should be re-written in a single paragraph.

Claim Rejections - 35 USC § 112

Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 11-12 polyolefin-based and vinyl-polymer based are not clear because it is not known what is encompassed by these phrases. Further, if vinyl-based means the material is chlorinated, is it acrylic or polypropylene?

In claim 4 and 16 it is not clear what is meant by "apparent density". What is the difference between "density" and "apparent density"?

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Claim 24 provides for the use of a particulate material, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 24 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prevost (USP 6,338,885).

Prevost teaches a synthetic grass surface comprising a backing member with parallel rows of strips or ribbons projecting upwardly from the backing member. A mixture of an infill particulate material comprising sand and cryogenically ground crumb rubber is provided on the

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backing member supporting the ribbon in a relatively upright position on the backing member.

See col. 7, lines 44-48. The reference suggests the rubber particles minimize abrasion and that the sand may be replaced by hard and heavy granulated plastics or the cryogenically ground crumb rubber could be replaced by other resilient materials such as cork, styrene, epdm rubber which is polyolefin-based material, neoprene or other similar materials. See col. 7, lines 44-67.

Claim 1 of the present application differs in the fact that it requires a homogenous mass of particulate material wherein the reference teaches a mixture material; however, it would have been obvious to one having ordinary skill in the art the time of the invention was made to omit one element, for example the sand, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. In re Karlson, 136 USPQ 184.

Regarding claims 2, the reference teaches the particles can range in size between four mesh and seventy mesh or between fifteen and thirty mesh for sports where abrasion of the players contacting the surface is a factor and between four and thirty mesh where abrasion is not a factor. It would have been obvious to one of ordinary skill in the art to select a thickness based on the final intended use of the structure.

Regarding claim 5-6 the reference teaches the thickness of the infill layer can range between one and four inches (which includes 30 mm).

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Regarding claims 3, the reference is silent regarding a specific density; however, it is the position of the Examiner that, since the material and the thickness are essentially the same, the density would inherently be so.

Regarding claim 8 and 9, the reference does not specifically require a recycled polyolefin or a recycled vinyl polymer material; however, it is within the judgment of a skilled artisan to select a recycled polyolefin or recycled vinyl polymer for economic reasons.

Regarding claims 11-12, patentability of a product-by process claims are based on the product itself even though such claims are limited to and defined by the process. Thus, the product is unpatentable if it is the same as or obvious from a product of the prior art even if the prior product was made by a different process. See MPEP 706.03(e). Absent a showing of unexpected results the claims are not seen to provide patentable distinction over the reference.

Claim Rejections - 35 USC § 103

Claims 13-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prevost '885.

Prevost teaches a particulate filling material such as a mixture of sand, and cryogenically ground rubber for use in a synthetic grass surface comprising a backing member with parallel rows of strips or ribbons projecting upwardly from the backing member. The infill particulate material is provided on the backing member supporting the ribbon in a relatively upright position on the backing member. See col. 5, lines 39-45. The reference suggests the rubber particles minimize abrasion and that the sand may be replaced by hard and heavy granulated plastics or the

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cryogenically ground crumb rubber could be replaced by other resilient materials such as cork, styrene, epdm rubber which is polyolefin based material, neoprene or other similar materials. See col. 7, lines 44-67.

Claim 13 of the present application differs in the fact that it requires a homogenous mass of particulate material wherein the reference teaches a mixture material; however, it would have been obvious to one having ordinary skill in the art the time of the invention was made to omit one element, for example the sand, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. In re Karlson, 136 USPQ 184.

Regarding claims 14, the reference teaches the particles can range in size between four mesh and seventy mesh or between fifteen and thirty mesh for sports where abrasion of the players contacting the surface is a factor and between four and thirty mesh where abrasion is not a factor. It would have been obvious to one of ordinary skill in the art to select a thickness based on the final intended use of the structure.

Regarding claim 17, the reference teaches the thickness of the infill layer can range between one and four inches (which includes 30 mm.

Regarding claims 15, the reference is silent regarding a specific density; however, it is the position of the Examiner that, since the material and the thickness are essentially the same, the density would inherently be so.

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Regarding claim 19 and 21, the reference does not specifically require a recycled polyolefin or recycled vinyl polymer; however, it is within the judgment of a skilled artisan to select a recycled polyolefin or recycled vinyl polymer for economic reasons.

Regarding claims 22 and 23, patentability of a product-by process claims are based on the product itself even though such claims are limited and defined by the process, and thus the product is unpatentable, if it the same as or obvious from a product of a prior art even if the prior product was made by different process. See MPEP 706.03(e). Absent a showing of unexpected results the claims are not seen to provide patentable distinction over the reference.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent 6,242,062 teaches synthetic grass fibers which are made from polyolefin, polyamides or fibers of natural or non-natural.

Any inquiry concerning this communication should be directed to Abraham Bahta at telephone number (703) 308-4412. The Examiner can normally be reached Monday-Friday from 11:30 AM -8:00 PM (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor Deborah, Jones, can be reached on (703) 308-3822. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

A. Bahta

06/28/02


DEBORAH JONES
SUPERVISORY PATENT EXAMINER